

Federal Act. The court therefore must sustain the PSC's dismissal of Consolidated's counterclaim and affirm the PSC decision.

## ARGUMENT

### **I. STANDARD OF REVIEW**

The standard of review is provided by N.D. Cent. Code § 28-32-19, which requires that the Court affirm the PSC's decision if a reasoning mind could have reasonably determined that the PSC's factual conclusions were supported by the weight of the evidence, if the PSC's conclusions of law are sustained by the findings of fact, and if the PSC's ultimate decision is supported by the conclusions of law. *Aggie Invs. v. Public Serv. Comm'n*, 470 N.W.2d 805, 813 (N.D. 1991); *Powers v. Job Service*, 598 N.W.2d 817, 818 (N.D. 1999).

### **II. THE PSC CORRECTLY CONCLUDED THAT WESTERN WIRELESS' WIRELESS RESIDENTIAL SERVICE IS A COMMERCIAL MOBILE RADIO SERVICE AND IS NOT SUBJECT TO STATE ENTRY REQUIREMENTS**

The sole issue in this appeal is whether the PSC properly determined that WRS is a CMRS offering. As Consolidated concedes, “[i]t is uncontested that if [WRS] . . . is a ‘commercial mobile service’ as defined by federal law, then entry regulation by the PSC is prohibited.”<sup>2/</sup> Because the PSC's determination that WRS is a CMRS offering is amply supported by the evidence, and the PSC's legal conclusions not to impose CPCN entry regulation on WRS logically follow from that determination, this Court must affirm.

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<sup>2/</sup> Brief of Appellant Consolidated Telephone at 7 (“Appellant's Brief”).

**A. The Evidence in the Record Supports the PSC's Factual Finding that WRS is a Form Of Commercial Mobile Radio Service**

The PSC's determination that Western Wireless' WRS offering is a commercial mobile radio service is supported by the weight of the evidence allowing the PSC to reasonably reach its factual conclusion. In the *Order*, the PSC cites the testimony of Western Wireless Special Projects Manager Kim Schmidt that "WRS functions like conventional cellular service in that it is associated with a customer rather than a specific location. Instead of using a hand-held phone or bag phone, WRS uses a ['Tellular'] device," *i.e.*, the WRS Unit.<sup>3/</sup> The *Order* also cites Ms. Schmidt's testimony that the WRS unit is about the size of a small laptop computer, that it uses a standard cellular antenna, that it can operate on battery power, and that the size, antenna and battery allow WRS subscribers to use the equipment from a vehicle, other building, or outdoors.<sup>4/</sup> The following colloquy between Ms. Schmidt and PSC Commissioner Wefald reinforces these points:

Q. When you market the service, do you sell it to people as a fixed service or a mobile and fixed service?

A. The most attractive thing about wireless residential, it is really the consumer's choice how they would like to use this service because it has both capabilities[.]

Q. So they can use it either as a fixed or a mobile service by taking it to other locations?

A. Correct.<sup>5/</sup>

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<sup>3/</sup> *Order* at ¶ 33.

<sup>4/</sup> *Id.*

<sup>5/</sup> Transcript at 42-43.

The PSC weighed this against Consolidated's contention that the WRS Unit is "heavy and awkward compared to hand-held wireless phones and must be connected to a traditional telephone set." <sup>6/</sup> While this evidence, at most, suggests that the WRS Unit is more like the old and still-used "bag" cellular phones that were prevalent in the early days of cellular, it does nothing to undermine Western Wireless' showing that the WRS Unit is freely movable at the subscriber's discretion, and can both be used in motion and at any location where a cellular signal can be received. The PSC agreed, correctly finding that Consolidated did not meet its burden of proof to show that WRS provides solely fixed service. <sup>7/</sup> The PSC thus properly concluded that Consolidated failed to refute Western Wireless' showing that WRS is "mobile service" consisting of "a radio communication service carried on between mobile stations or receivers and land stations," <sup>8/</sup> and that the WRS Unit is a "mobile station" in that it is "capable of being moved and [ ] ordinarily does move." <sup>9/</sup> There is ample support in the record for the PSC's conclusion that the WRS Unit is capable of being moved and ordinarily does move if the WRS subscriber so desires.

Consolidated's eleventh hour attempt to bolster its claims before this Court must be rejected as unavailing. <sup>10/</sup> In its *Motion*, Consolidated proffers copies of the initial WRS Agreement and WRS Demo/Loaner Equipment Agreement, arguing

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<sup>6/</sup> *Id.* at ¶ 34.

<sup>7/</sup> *Id.* at ¶ 37.

<sup>8/</sup> 47 U.S.C. § 153(27).

<sup>9/</sup> 47 U.S.C. § 153(28).

<sup>10/</sup> Application (Motion) and Brief for Leave to Offer Additional Documents, filed by Consolidated on December 23, 1999, at 1 (*"Additional Documents Motion"*).

that language in these documents that “the [WRS] unit is intended to remain stationary,” demonstrates that the WRS is not mobile. This purported “proof,” however, misses the mark. The cited service contract language, precluding WRS subscribers from using their WRS Units away from the location where they were installed, arose from initial service-quality and product-durability concerns. This language was added by the sales and marketing group, and has since been deleted at the direction of Western Wireless.<sup>11/</sup> As the record evidence discussed above demonstrates, the WRS Units are fully capable of being used for mobile applications, and no language impulsively placed into – and later deleted from – the sales contract changes that fact.

Finally, the PSC’s conclusion that WRS is a form of CMRS follows from the facts that: (1) WRS has both fixed and mobile capabilities, and (2) WRS is an auxiliary or ancillary offering to Western Wireless’ conventional cellular services offered throughout the state. The FCC has held that services falling into either of these categories constitute CMRS, and this federal agency interpretation of its organic statute is binding on the PSC and on this court.<sup>12/</sup> First, the FCC has concluded that “services having both fixed and mobile capabilities, *e.g.*, services provided through dual-use equipment, fall within the statutory definition” of “commercial mobile

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<sup>11/</sup> See attached Declaration of Gene DeJordy.

<sup>12/</sup> *Elizabeth Blackwell Cent. for Women v. Knoll*, 61 F.3d 170, 181-82 (3rd Cir. 1995) (citing, *inter alia*, *Chevron U.S.A., Inc. v. Natural Resources Defense Council*, 467 U.S. 837, 844-45 (1984)).

service.”<sup>13/</sup> The PSC correctly found that WRS has both fixed and mobile capabilities.<sup>14/</sup> Second, the FCC has accorded CMRS treatment to “ancillary, auxiliary and incidental service offered by CMRS providers,” as Consolidated concedes.<sup>15/</sup> In sum, the PSC properly found that Western Wireless is a CMRS provider, that WRS has attributes of a mobile cellular offering, and that WRS is ancillary or incidental to Western Wireless’ conventional cellular offerings. It was therefore entirely reasonable and legally correct for the PSC to conclude that WRS is properly classified as a CMRS offering exempt from state entry regulation.

All told, the PSC’s factual conclusion that Western Wireless’ WRS offering is a “commercial mobile radio service” is reasonably supported by the evidence and must be affirmed.

**B. The PSC Correctly Held that WRS is Exempt from State Entry Regulation Such as Certification Requirements**

The Court should affirm the PSC’s clearly correct legal conclusion that Section 332(c)(3)(A) of the Federal Act precludes the PSC from requiring entry certification for WRS. This legal conclusion logically flows from the PSC’s proper factual determination that WRS is a “commercial mobile radio service” as defined by

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<sup>13/</sup> *Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services*, Second Report & Order, 9 FCC Rcd 1411, 1425, ¶ 38 (1994) (“*CMRS 2nd Report and Order*”); see also *Amendment of the Commission’s Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, Report & Order and Notice of Proposed Rulemaking, 11 FCC Rcd 8965, 8969, ¶ 7 (1996) (“*CMRS Flexibility Order/NPRM*”).

<sup>14/</sup> *Order* at ¶ 38 (“WRS has mobile capabilities”).

<sup>15/</sup> *CMRS 2nd Report and Order*, 9 FCC Rcd at 1424, ¶ 26; Appellant’s Brief at 18.

the Federal Act. The court therefore must sustain the PSC's dismissal of Consolidated's counterclaim.

Section 332(c)(3)(A) of the Federal Act expressly preempts state entry regulation of CMRS offerings. Consolidated concedes that, "if [WRS] . . . is a 'commercial mobile service' as defined by federal law, then entry regulation by the PSC is prohibited."<sup>16/</sup> Consolidated also concedes that North Dakota's Certificate of Public Convenience and Necessity ("CPCN") requirement is a form of entry regulation, and thus, Section 332(c)(3)(A) precludes application of CPCN requirements to CMRS.<sup>17/</sup> Thus, based on the PSC's correct factual conclusion that WRS (like other cellular mobile services) is CMRS, the PSC's legal conclusion that it could not impose the CPCN obligation upon Western Wireless for its WRS is sound and must be affirmed.

Consolidated's analysis of preemption law is flawed. Consolidated overlooks the fundamental statutory command at issue here – Congress' clear and unequivocal directive that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service . . . ." <sup>18/</sup> This expression of clear Congressional intent to preempt state law by statute – a form

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<sup>16/</sup> Appellant's Brief at 7.

<sup>17/</sup> *Id.* at 13 (recognizing that "Western Wireless was able to construct and operate [its] cellular mobile system without a [CPCN] because that service is exempt from state and entry regulation."); see also *Inquiry Relative to the Future Use of the Frequency Band 806-960 MHz*, Docket No. 18262, Memorandum Opinion and Order, 51 FCC 2d 945, 974, ¶¶ 87-89 (1975), *aff'd*, *National Ass'n of Regulatory Comm'rs v. FCC*, 525 F.2d 630 (D.C. Cir. 1976).

<sup>18/</sup> 47 U.S.C. § 332(c)(3)(A).

of preemption that falls in the “Type 1 preemption” category invented by Consolidated’s counsel – leaves no room for doubt. This language makes it clear that there is no need for additional FCC action to preempt state entry regulation of CMRS.

There is thus no merit to Consolidated’s argument that, because some related issues have not been definitively resolved by the FCC, the FCC has not yet clearly preempted in this area.<sup>19/</sup> Consolidated miscasts the inquiry before the PSC and the Court. The question is not whether the *FCC* has preempted state rate and entry regulation for purely fixed services offered by commercial mobile service providers. Rather, given the PSC’s well-supported factual conclusion that WRS is a mobile service or a hybrid fixed/mobile service that (as the FCC has definitively concluded) falls within the definition of “commercial mobile services,”<sup>20/</sup> the narrow legal question is whether the *Federal Act* preempts state rate and entry regulation of WRS. The answer is clearly yes.

By enacting Section 332(c)(3)(A), Congress itself fenced off commercial mobile radio services such as WRS from state entry regulation including CPCN requirements. After finding WRS to be CMRS, the PSC had no choice but to hold that North Dakota’s CPCN requirement could not be imposed on Western Wireless’ WRS offering. Thus, the PSC correctly dismissed Consolidated’s counterclaim seeking that the PSC impose North Dakota’s CPCN requirement on the WRS offering. This Court must affirm the PSC’s Order.

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<sup>19/</sup> *Id.* at 7-10 (citing *CMRS Flexibility Order/NPRM*).

<sup>20/</sup> See *CMRS 2nd Report and Order*, 9 FCC Rcd at 1428-29, ¶ 45.



CONCLUSION

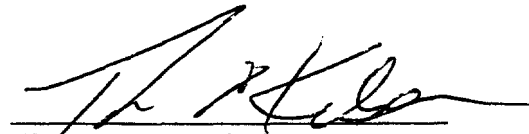
For the foregoing reasons, the Court should affirm the PSC's factual finding that Western Wireless' WRS offering in Regent is a Commercial Mobile Service under federal law, and its legal conclusion that federal law preempts the application of state rate and entry regulation, such as requirements for certificates of public convenience and necessity, to WRS.

Dated this 3rd day of February, 2000.

Respectfully submitted,

**WESTERN WIRELESS CORPORATION**

By:



Thomas D. Kelsch

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(202) 637-5600

CERTIFICATE OF SERVICE

A true and correct copy of the foregoing BRIEF OF APPELLEE WESTERN WIRELESS CORPORATION was served via first class mail, postage prepaid on each of the persons listed below on the 3<sup>rd</sup> day of February, 2000 to:

MICHAEL J MAUS  
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WILLIAM W BINEK  
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500 E BOULEVARD AVE - DEPT 408  
BISMARCK ND 58505-0480

  
THOMAS D. KELSCH

## DECLARATION

I, Gene DeJordy, declare under penalty of perjury that to the best of my recollection, knowledge, understanding and belief, the foregoing is true and correct:

1. I am employed by Western Wireless Corporation ("Western Wireless"). My title is Vice President of Regulatory Affairs. I have been employed by Western Wireless since December 1995.

2. As Vice President of Regulatory Affairs, my responsibilities include oversight of the roll-out of Wireless Residential Service, including the market trial in Regent, North Dakota.

3. I am familiar with the Wireless Residential Service Agreement and Wireless Residential Service Demo/Loaner Equipment Agreement submitted to the North Dakota District Court for the Southern Central Judicial District in *Consolidated Telephone Cooperative v. Western Wireless*, Case No. 08-99-C-02486/001, on December 27, 1999.

4. The statement in the documents referenced in paragraph 3 that "the [Wireless Residential Service] Unit is intended to remain stationary," which temporarily precluded Wireless Residential Service subscribers from using their Units away from the location where the Units were installed, was inserted by the sales and marketing group due to initial service-quality and product-durability concerns. Wireless Residential Service was a new service offering and the equipment used to provide it was also relatively new. To facilitate trouble-shooting and identifying the source of any service or system problems, we initially directed our customers to leave the equipment where it was first placed.

5. The contractual language described in paragraph 4 has been deleted from the Wireless Residential Service and Wireless Residential Service Demo/Loaner Equipment Agreements at the direction of Western Wireless and will not be reinserted.

6. Notwithstanding the foregoing, the fact that the original version of the above-described Agreements required Wireless Residential Service subscribers to keep their equipment in its original location does not alter the fact that the equipment is mobile cellular equipment that customers can use in mobile applications and, irrespective of the customer service agreements, many do.

Executed on February 3, 2000  
at Bellevue, Washington



Gene DeJordy

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January 26, 2000

HAND DELIVERED

CLERK OF BURLEIGH COUNTY DISTRICT COURT  
PO BOX 1055  
BISMARCK ND 58502-1055

RE: Consolidated Telephone Cooperative v. Western Wireless Corporation, and North Dakota  
Pubic Service Commission  
Civil No. 99-C-2486  
Our File No. 8451

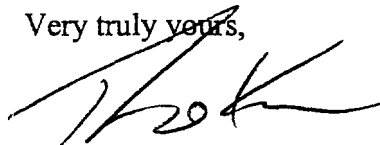
Dear Clerk:

Enclosed for filing are the following documents:

1. Notice of Motion Pursuant To Rule 3.2 North Dakota Local Rules of Court;
2. Application, Motion & Brief For Leave to Offer Additional Documents; and
3. Proposed Order.

Thank you for your attention to this matter.

Very truly yours,



Thomas D. Kelsch

ve

Encs

c: Western Wireless Corporation

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT  
CIVIL NO. 99-C-2486

Consolidated Telephone Cooperative,  
Appellant,  
vs.  
Western Wireless Corporation, and  
North Dakota Public Service Commission,  
Appellees.

**NOTICE OF MOTION PURSUANT  
TO RULE 3.2 NORTH DAKOTA  
LOCAL RULES OF COURT**

PSC Case No. PU-1564-99-17

TO ALL PARTIES AND THEIR ATTORNEYS:

You are hereby given notice of the attached Application Motion to Offer Additional Documents is being brought before the Court for determination pursuant to Rule 3.2 of the North Dakota Local Rules of Court and Rule 56 of the North Dakota Rules of Civil Procedure.

You have ten (10) days after service upon you of the Motion within which to serve and file a response to this Motion. If you fail to do so, the Motion will be subject to summary ruling and the Court may grant the relief requested in the Motion. The attached Motion is brought pursuant to Rule 3.2 of the North Dakota Rules of Court, which in part specifies that no hearing upon the Motion is necessary unless requested by a party. Western Wireless does not request a hearing.

Dated this 26 day of January, 2000.

  
THOMAS D. KELSCH  
State Bar ID No. 03918  
KELSCH, KELSCH, RUFF & KRANDA  
Attorneys for Western Wireless Corp.  
103 Collins Avenue, P.O. Box 1266  
Mandan, North Dakota 58554-7266  
(701) 663-9818

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT  
CIVIL NO. 99-C-2486

Consolidated Telephone Cooperative,  
Appellant,

vs.

Western Wireless Corporation, and  
North Dakota Public Service Commission,  
Appellees.

\_\_\_\_\_  
PSC Case No. PU-1564-99-17  
\_\_\_\_\_

**APPLICATION, MOTION &  
BRIEF FOR LEAVE TO OFFER  
ADDITIONAL DOCUMENTS**


Appellant, Consolidated Telephone Cooperative, moved this Court to offer into evidence two additional documents obtained from Appellee, Western Wireless Corporation, in discovery in Federal District Court Case No. A1-99-006. Western Wireless did not object to Consolidated's application for leave to offer these documents. In light of the fact that these documents have been filed before this Court, Western Wireless feels that it is necessary to file these responsive documents, because these documents were not filed before the Public Service Commission (PSC) and were not subject to an explanation at the PSC. Western Wireless hereby requests that it be given an opportunity to respond to these documents and file the attached response and statement. Consolidated claims that the CellularOne Wireless Residential Service Agreement and the Wireless Residential Service Demo/Loaner Equipment Agreement are relevant and material because they specifically state that the unit is intended to remain stationary. The additional information sought to be brought before the Court by Western Wireless is a Declaration of John M. Tedeschi an explanation concerning the reason for the language in the initial agreements, and supplemental filing in the Federal District Court Case No. A1-99-006, along with an Addendum to CellularOne Wireless Residential Service Agreement.

NDCC § 28-32-18 provides that when additional documents are relevant and material, and there is reasonable grounds for the failure to offer the evidence in the hearing, the Court may

order the additional evidence to be taken and considered by the agency. With the Court's Order allowing consideration of the two documents filed by Consolidated it became necessary for Western Wireless to respond and explain these documents.

WHEREFORE, Appellee, Western Wireless, asks the Court to admit the attached documents into evidence and be submitted to the record before the Public Service Commission.

Dated this 26 day of January, 2000.



---

THOMAS D. KELSCH  
State Bar ID No. 03918  
KELSCH, KELSCH, RUFF & KRANDA  
Attorneys for Appellees, Western Wireless Corp.  
103 Collins Avenue, P.O. Box 1266  
Mandan, North Dakota 58554-7266  
(701) 663-9818

The Appellant recently supplemented the record in this proceeding by introducing two additional documents that they claim are "highly relevant and material." As explained in the attached Declaration of John Tedeschi, the language contained in the documents submitted by the Appellant that required the wireless access unit to remain stationary "was added primarily because of a concern over service quality." The Public Service Commission correctly concluded that, based upon all of the facts, the wireless access unit is mobile.

Recognizing, however, that the contract language limits the mobility of the wireless access unit and that mobility is an important attribute of the service, the attached Addendums to the CellularOne Wireless Residential Service Agreement and Wireless Residential Service Demo/Loaner Equipment Agreement have been prepared to remove this limitation and will be entered into with each of the Company's customers using the wireless access unit. Instead of addressing the quality of the service through contract language that limits the mobility of the wireless access unit, the Company will work with its customers to maintain its high-quality service.



**ADDENDUM TO  
CELLULARONE WIRELESS RESIDENTIAL SERVICE AGREEMENT**

This Addendum to the CellularOne Wireless Residential Service Agreement replaces Section 2 of the General Terms and Conditions with the following language:

2. Use of Service. You agree not to resell the Service (whether for profit or otherwise) or to use your Unit or the Service for any unlawful or abusive purpose or in such a way to create damage or risk to our business, reputation, employees, facilities, third parties or to the public generally. You have no proprietary or ownership rights to or interests in a specific telephone number ("Number") assigned to your Unit. We may change your Number assignment at any time. You may not use or assign the Number to any other Unit or electronic serial number ("ESN"). You shall not program any other Number into your Unit and any such act shall be deemed to be fraud and a breach of this Agreement.

\_\_\_\_\_  
Customer

\_\_\_\_\_  
CellularOne

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

Received Time Jan.24. 7:15PM

**ADDENDUM TO  
WIRELESS RESIDENTIAL SERVICE DEMO/LOANER EQUIPMENT  
AGREEMENT**

This Addendum to the Wireless Residential Service Demo/Loaner Equipment Agreement replaces the introductory paragraph with the following paragraphs:

The Wireless Residential Service Demo/Loaner communication equipment described below, including any additional or replacement equipment (the "Unit"), is provided to you as a courtesy by Cellular One for Cellular One Wireless Residential Service ("Service") use only. You acknowledge that you are responsible for payment of all charges incurred by the Unit while it is in your possession and/or activated under your account. You agree to allow Cellular One access to the Unit installation location at a date and time set by Cellular One to remove the Unit (1) immediately upon Cellular One's request, (2) at the agreed upon date, or (3) within ten days of Service deactivation, whichever is first. If you have submitted equipment for repair, you acknowledge that Cellular One cannot guarantee estimated repair costs; you will be advised if actual repair costs exceed the estimate. For additional service terms and conditions, please see you Service Agreement.

\_\_\_\_\_  
Customer

\_\_\_\_\_  
CellularOne

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA

WESTERN WIRELESS CORPORATION and WWC  
HOLDING CO., INC., dba CELLULAR ONE,

*Plaintiffs,*

v.

CONSOLIDATED TELEPHONE  
COOPERATIVE,

*Defendant.*

CIVIL ACTION  
NO. A1-99-006

DECLARATION OF JOHN M. TEDESCHI

I, John M. Tedeschi, do hereby declare and affirm, under penalty of perjury:


1. I am employed by Western Wireless Corporation ("Western"), the Plaintiff in this matter. My title is Director of Product Development.
2. I have been employed by Western since November, 1995.
3. As part of my regular duties for Western, I head a development group which develops new telecommunications products, specifically those that operate off of a switch, and then introduce those products into the market. I also manage a competitive local exchange in Billings, Montana that provides landline business telecommunications to small businesses in that area. With respect to Western's new WRS offering, I headed the business development group that introduced the WRS service into Regent, North Dakota. My duties as part of this project generally included creating a project plan and supervising a project manager. One of

my specific duties included the review and approval of the Demo/Loaner Agreement and the Wireless Residential Service Agreement for Western's new WRS offering in Regent, North Dakota.

4. I am aware that Defendant's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment, includes a passage in which the Defendant states that "paragraph 2 of the Terms & Conditions of the Wireless Residential Service Agreement signed by each of Western's WRS customers provides that the 'Unit' given to the customer for WRS 'is intended to remain stationary[.]'" as well as a passage which states, Western's "own internal documents which describe WRS as a 'fixed wireless product offering' and which, by written contract with WRS subscribers, prohibit the movement of the equipment provided to the customer for WRS."
5. I was not asked about either of these WRS customer contracts or any of these specific provisions in my deposition on August 12, 1999, or anytime thereafter. If, however, I had been asked why this sentence was included in Western's service agreements for its WRS service, I would have responded that this language was added primarily because of a concern over service quality. This concern was present because WRS was a new service offering and the equipment used to provide the service also was new. We knew that some trouble shooting would be necessary and, to make it easier to identify the source of any problems, we directed our customers to leave the equipment where it was first placed.
6. In addition, we knew that we could only ensure that calls made from and placed to the unit in the Regent exchange would be rated correctly only if the unit remained within the Regent area. If the customer used the unit outside of the Regent area, long distance charges might be incurred.

7. The fact that we required our customers to keep their equipment in its original location does not alter the fact that the WRS equipment is mobile cellular equipment that customers could use in mobile applications and, notwithstanding the customer service agreements, many do.

Dated: January 14, 2000



John M. Tedeschi

STATE OF NORTH DAKOTA  
COUNTY OF BURLEIGH

IN DISTRICT COURT  
SOUTH CENTRAL JUDICIAL DISTRICT  
CIVIL NO. 99-C-2486

Consolidated Telephone Cooperative, )  
Appellant, )  
vs. )  
Western Wireless Corporation, and )  
North Dakota Public Service Commission, )  
Appellees. )

**ORDER**

\_\_\_\_\_  
PSC Case No. PU-1564-99-17  
\_\_\_\_\_

The Court having received an Application, Motion & Brief for Leave to Offer Additional Documents by the Appellee, Western Wireless Corporation, hereby grants the Application in the above-entitled action.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2000.

BY THE COURT:

\_\_\_\_\_  
GAIL HAGERTY  
Judge of the District Court

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

CIVIL NO. 99-C-2486

Consolidated Telephone Cooperative,

Appellant,

vs.

Western Wireless Corporation, and  
North Dakota Public Service Commission,

Appellees.

**AFFIDAVIT OF SERVICE  
BY MAIL**

PSC Case No. PU-1564-99-17

STATE OF NORTH DAKOTA

COUNTY OF MORTON

ss.

VALERIE EHRLICH, being first duly sworn, on oath, deposes and says: That she is a citizen of the United States, over the age of eighteen and not a party to the above-entitled action.

That on the 26 day of January, 2000, this affiant deposited in the United States Post Office at Mandan, North Dakota, a true and correct copy of the following document(s) in the above captioned action:

1. Notice of Motion Pursuant To Rule 3.2 North Dakota Local Rules of Court;
2. Application, Motion & Brief For Leave to Offer Additional Documents; and
3. Proposed Order.

That a copy of the above document(s) was faxed and securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

MICHAEL J MAUS  
HOWE MAUS & NORDSVEN  
PO BOX 370  
DICKINSON ND 58602-0370

WILLIAM W BINEK  
SPECIAL ASSISTANT ATTORNEY GENERAL  
500 E BOULEVARD AVE - DEPT 408  
BISMARCK ND 58505-0480

MICHELE C FARQUHAR  
HOGAN & HARTSON LLP  
COLUMBIA SQUARE  
555 13<sup>TH</sup> ST NW  
WASHINGTON DC 20004-1109

Subscribed and sworn to before me this 26 day of January, 2000.

LORI SPENCER  
Notary Public, STATE OF NORTH DAKOTA  
My Commission Expires APRIL 18, 2000

Jan 68 '00

STATE OF NORTH DAKOTA

IN DISTRICT COURT

COUNTY OF BURLEIGH

SOUTH CENTRAL JUDICIAL DISTRICT

Consolidated Telephone Cooperative, )

Appellant, )

vs. )

Western Wireless Corporation and )

North Dakota Public Service )

Commission, )

Appellees. )

Case No. 08-99-C-02486/001

BRIEF OF APPELLANT CONSOLIDATED TELEPHONE COOPERATIVE



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